

**MINUTES OF THE PUBLIC MEETING OF THE
ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY
June 19, 2004**

BOARD MEMBERS PRESENT: President Martin Reiss, D.O.; Murray Cohen, D.O.; David Steinway, D.O.; Charlie Hendrix; F. P. Wedel, D.O.

BOARD MEMBERS ABSENT: Vice-President Stanley Grossman; Stanley Brysacz, Jr., D.O.

STAFF / OTHERS PRESENT: Elaine LeTarte, Executive Director
Barbara Meyers, Deputy Director
Barbara Prah-Wix, D.O., Medical Consultant
Blair Driggs, Assistant Attorney General
Carole A. Whipple, Griffin & Associates (Court Reporter)

I. CALL TO ORDER

The Board President, Dr. Martin Reiss, called the meeting to order at 8:15 a.m.

II. ROLL CALL

The Executive Director took the roll. The five Board Members listed above were present, establishing quorum for the meeting. Ms. Hendrix was not present when the meeting was called to order, but joined the meeting at 8:20 a.m. The staff and others listed above were also present.

The Executive Director reviewed the changes made between the draft agenda distributed to the Board, and the final agenda.

III. PRESIDENT'S REPORT

Dr. Reiss welcomed the 3rd year medical students from Arizona College of Osteopathic Medicine at Midwestern University. After the conclusion of the Investigative and Administrative Hearings and applicant interviews, the Board held a question and answer session with the medical students. The students were dismissed at approximately 12:15 p.m.

IV. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES

A. May 8, 2004 meeting, open session

Dr. Cohen moved that the minutes be approved. Dr. Wedel seconded. The motion passed, 4-0.

B. May 8, 2004 meeting, executive session

Dr. Steinway moved that the minutes be approved. Dr. Wedel seconded. The motion passed, 4-0.

V. CALL TO THE PUBLIC

Dr. Reiss explained to those present the Board's custom of asking members of the public to speak when the agenda item of interest to the person is called, and reminded people wishing to speak to fill out a speaker form and give it to a staff member.

VI. REVIEW, DISCUSSION, AND ACTION ON CASES MOVED TO FORMAL ADMINISTRATIVE HEARING, PURSUANT TO A.R.S. § 32-1855 (E).

No formal administrative hearings were on the agenda for this meeting.

VII. REVIEW, DISCUSSION AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. § 32-1855 (E)

A. Henry Tomlinson, D.O. Case No. 3189 License No. 2639

Dr. Tomlinson was present, and represented by an attorney. Dr. Tomlinson was sworn in by the court reporter. Dr. Reiss stated for the record that this was a continuation of the hearing that began on January 24, 2004. Dr. Tomlinson discussed the case with the Board and responded to the Board's questions. Dr. Wedel moved that Dr. Tomlinson's license be censured, and that Dr. Tomlinson be placed on probation and required to attend continuing medical education (CME).

At 8:45 a.m. Dr. Wedel moved that the Board go into executive session to receive legal advice. Dr. Steinway seconded. The motion passed, 5-0. The Board returned to open session at 8:55 a.m.

At that time, Dr. Wedel withdrew his previous motion, then moved that the Board censure Dr. Tomlinson's license and place it on probation for one year. Ms. Hendrix seconded the motion. The terms of the probation are that Dr. Tomlinson obtain 40 hours of CME on the following topics: infectious diseases, hypertension, use of steroids, and urinary tract syndrome; that the CME be in addition to the CME required for renewal of his license, that the CME be approved by the Board's Executive Director in advance of Dr. Tomlinson taking it. During the year of the probation, the Board's staff will conduct periodic reviews of Dr. Tomlinson's charts.

Dr. Wedel moved, and Ms. Hendrix seconded, that the above be based on findings that Dr. Tomlinson's conduct in this case is in violation of A.R.S. §§ 32-1854:

(6) "Engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard" and

(40) "Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so."

The factual findings are that: 1) The chart records of patient P.M. say one thing; Dr. Tomlinson testified another thing; 2) Billing record says one thing, Dr testified another 3) Use of medications in face of multiple diagnoses makes Dr. Tomlinson's choice of medications contraindicated, and 4) Dr. Tomlinson's knowledge of and compilation of diagnoses makes choice of medications harmful.

A roll call vote was taken. Dr. Wedel, Ms. Hendrix, Dr. Cohen, Dr. Steinway, and Dr. Reiss voted in favor. No one voted against. The motion passed, 5-0.

B. Michael Ginder, D.O. Case No. 3033 License No. 0959

Dr. Ginder requested and was granted a continuance.

C. Carmen Alfonso, D.O. Case No. 3136 License No. 3004

D. Carmen Alfonso, D.O. Case No. 3139 License No. 3004

E. Carmen Alfonso, D.O. Case No. 3152 License No. 3004
Dr. Alfonso requested and was granted a continuance.

F. Kenneth Young, D.O. Case No. 3145 License No. 2930
Dr. Young was present and represented by an attorney. Dr. Young was sworn in by the court reporter. The Deputy Director read the case summary into the record. Dr. Young discussed the case with the Board and responded to their questions. Dr. Steinway moved to dismiss the case. Ms. Hendrix seconded. The motion passed, 5-0.

G. Brendon Labban, D.O. Case No. 3221 License No. 2717
Dr. Labban was present and represented by an attorney. Dr. Labban was sworn in by the court reporter. The Deputy Director read the case summary into the record. Dr. Labban discussed the case with the Board and responded to their questions. Dr. Steinway moved to dismiss the case. Dr. Cohen seconded. A roll call vote was taken. Dr. Steinway, Dr. Cohen, Dr. Wedel, Ms. Hendrix, and Dr. Reiss voted in favor of the motion. No one voted against. The motion passed, 5-0.

H. Joseph Janzer, D.O. Case No. 3237 License No. 3702
Dr. Janzer was not present and had notified the Board he will not be returning to AZ. Dr. Steinway moved that the case be referred back to the Case Review level and placed again on the Board's agenda. Ms. Hendrix seconded. The motion passed, 5-0.

I. Ethan Kennedy, D.O. Case No. 3290 License No. 3123
Dr. Kennedy was present and sworn in by the court reporter. The Medical Consultant selected four cases from the forty chart reviews done and read them into the record. The Board discussed each case with Dr. Kennedy after it was read and Dr. Kennedy responded to the Board's questions. Dr. Steinway moved that Dr. Kennedy's license be censured and placed on probation for one year. The terms of the probation are that it runs concurrently with Dr. Kennedy's existing probation order, that Dr. Kennedy obtain 20 hours of CME in pain management within the next 12 months, that the CME be in addition to the CME required for license renewal, and that the courses be approved by the Board's Executive Director in advance of Dr. Kennedy taking them for this reason.

The action is based on concluding that Dr. Kennedy's conduct violated A.R.S. §§ 32-1854:

(5) "Prescribing, dispensing or administering controlled substances or prescription only drugs for other than accepted therapeutic purposes,"

(6) "Engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard,"(38). Prescribing or dispensing controlled substances or prescription-only medications without maintaining adequate and appropriate patient records," and

(40) "Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so."

The findings were that the review of charts demonstrated that Dr. Kennedy had mis-prescribed narcotics, and the medical records did not show adequate histories and physical examinations, and follow-up care.

A roll call vote was taken. Dr. Steinway, Dr. Wedel, Dr. Cohen, and Dr. Reiss voted in favor of the motion. Ms. Hendrix voted against it. The motion passed, 4-1.

VIII. REVIEW, CONSIDERATION AND ACTION ON COMPLIANCE WITH TERMS OF BOARD ORDERS AND REQUESTS TO MODIFY OR TERMINATE ORDERS, PURSUANT TO A.R.S. 32-1855.

Kenneth Levine, D.O.

Case No. 2775

License No. 1696

This matter was tabled pending receipt of documentation from Dr. Levine.

IX. REVIEW, CONSIDERATION, AND ACTION ON APPLICATIONS FOR LICENSURE PURSUANT TO A.R.S. §32-1822 (B): PERMITS PURSUANT TO § A.R.S. 32-1829; AND RENEWALS OF LICENSES PURSUANT TO A.R.S. §32-1825 (C-D) AND A.A.C. R4-22-109.

A. Brandon Covert, D.O.

Applicant. No. AP0015

The Board reviewed Dr. Covert's response to the request they made at the May 8, 2004 meeting. The Board tabled the matter with knowledge that in doing so, Dr. Covert's application would expire on July 3, 2004.

B. Brian Seyler, D.O.

Applicant. No. AP0047

Dr. Seyler was present. The Executive Director summarized the outstanding issues with Dr. Seyler's application. He discussed those with the Board and responded to their questions. Dr. Steinway moved that Dr. Seyler be approved for licensure. Dr. Wedel seconded. The motion passed, 5-0.

C. John Taylor, D.O.

License No. 2775

Dr. Taylor was present. The Executive Director summarized the issues with Dr. Taylor's renewal application. Dr. Taylor discussed those with the Board and answered their questions.

Ms. Hendrix moved that the Board go into Executive Session for legal advice. Dr. Steinway seconded. The Board went into Executive Session at 11:30 p.m., and returned to open session at 12:20 p.m.

Ms. Hendrix moved that the Board not accept Dr. Taylor's application for renewal, as it was untimely filed. Dr. Wedel seconded. A roll call vote was taken. Ms. Hendrix, Dr. Wedel, Dr. Steinway, Dr. Cohen, and Dr. Reiss voted in favor of the motion. No one voted against it. The motion passed, 5-0.

X. REVIEW, DISCUSSION, AND ACTION ON CASE REVIEWS OF ALLEGATIONS OF UNPROFESSIONAL CONDUCT A.R.S. § 32-1855 (D through F).

A. Heidi Haight-Biehler, D.O.

Case No. 3004M

License No. 1778

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Dr. Cohen seconded. The motion passed, 5-0.

B. Douglas Cunningham, D.O.

Case No. 3194

License No. 2325

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that this case be dismissed. Dr. Cohen seconded. The motion passed, 5-0.

C. Ronald Cohen, D.O. Case No. 3186 License No. 3433

Dr. Ronald Cohen was present. Based on the case materials and the recommendations of the independent reviewers, Dr. Steinway moved that this case be dismissed. Ms. Hendrix seconded. The motion passed, 5-0.

D. David Steinway, D.O. Case No. 3215 License No. 1552

Dr. Steinway recused himself. Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that this case be dismissed. Dr. Cohen seconded. The motion passed, 5-0.

E. Duane Darnell, D.O. Case No. 3240 License No. 2311

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that an Administrative hearing be conducted on this case. Ms. Hendrix seconded. The motion passed, 5-0.

F. Elliott Turetzky, D.O. Case No. 3313 License No. 1167

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that an Administrative Hearing be conducted on this case. Dr. Wedel seconded. The motion passed, 5-0.

G. Basem Meri, D.O. Case No. 3270 License No. 3370

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Dr. Cohen seconded. The motion passed, 5-0.

H. Jay Bishop, D.O. Case No. 3235M License No. 3748

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board dismiss this case. Dr. Wedel seconded. The motion passed, 5-0.

I. Robert Marotz, D.O. Case No. 3273 License No. 2137

Dr. Marotz and his attorney were present. Based on the case materials and the recommendations of the reviewers, Dr. Cohen moved this case be dismissed. Dr. Steinway seconded. The motion passed, 5-0.

J. Jay Schwartz, D.O. Case No. 3218 License No. 3208

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the Board dismiss this case. Ms. Hendrix seconded. The motion passed, 5-0.

K. Elizabeth Carson, D.O. Case No. 3268 License No. 3637

Based on the case materials and the recommendations of the reviewers, Ms. Hendrix moved that the Board dismiss this case. Dr. Steinway seconded. The motion passed, 5-0.

L. Budi Bahureksa, D.O. Case No. 3253 License No. 3901

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Dr. Wedel seconded. The motion passed, 5-0.

M. Budi Bahureksa, D.O. Case No. 3274 License No. 3901

Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board conduct an Investigative Hearing on this case. Dr. Wedel seconded. The motion passed, 5-0.

N. Gary Erbstoesser, D.O. Case No. 3206 License No. 2751

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the Board dismiss this case. Dr. Steinway seconded. The motion passed, 5-0.

O. Joseph Janzer, D.O. Case No. 3244 License No. 3702
Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the Board dismiss this case. Ms. Hendrix seconded. The motion passed, 5-0.

P. Jeffrey Gitt, D.O. Case No. 3281 License No. 2023
Based on the case materials and the recommendations of the reviewers, Dr. Cohen moved that the Board dismiss this case. Dr. Steinway seconded. The motion passed, 5-0.

Q. Jeffrey Gitt, D.O. Case No. 3282 License No. 2023
Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the Board dismiss this case. Dr. Cohen seconded. The motion passed, 5-0.

R. Janice Charlene Tracy, D.O. Case No. 3179 License No. 3084
Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the Board dismiss this case. Dr. Steinway seconded. The motion passed, 5-0.

S. David Reynolds, D.O. Case No. 3220 License No. 3529
Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the Board dismiss this case. Dr. Steinway seconded. The motion passed, 5-0.

T. David Miller, D.O. Case No. 3280 License No. 3206
Dr. Miller was present. Based on the case materials, the recommendations of the three independent reviewers, and discussion with Dr. Miller, Dr. Cohen moved that this case be dismissed. Dr. Wedel seconded. The motion passed, 5-0.

U. Robert Casey, D.O. Case No. 3232 License No. 1955
Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that the Board dismiss this case. Dr. Steinway seconded. The motion passed, 5-0.

V. Henry Tomlinson, D.O. Case No. 3307 License No. 2639
Dr. Tomlinson and his attorney were present. Based on the case materials and the recommendations of the three independent reviewers, Dr. Steinway moved that an Investigative Hearing be conducted. Dr. Wedel seconded. The motion passed, 5-0.

W. Richard Weaver, D.O. Case No. 3353 License No. 3426
Based on the case materials and the recommendations of the reviewers, Dr. Steinway moved that the Board dismiss this case. Dr. Wedel seconded. The motion passed, 5-0.

Renewal / CME complaints:

X. Robert Marouk, D.O. Case No. 3360 License No. 3583
The Board agreed to allow Dr. Marouk an additional 90 days in which to obtain the rest of the required CME hours for renewal.

Y. Alphonse Ambrosia, D.O. Case No. 3361 License No. 2705

The Board agreed to allow Dr. Ambrosia an additional 90 days in which to obtain the rest of the required CME hours for renewal.

Z. Mary Morehouse, D.O. Case No. 3362 License No. 3283

The Board noted that Dr. Morehouse had obtained and documented the required 40 hours of CME, and so dismissed the complaint.

AA. Paul Blackburn, D.O. Case No. 3363 License No. 2680

The Board agreed to allow Dr. Blackburn an additional 90 days in which to obtain the rest of the required CME hours for renewal, or request a waiver.

BB. Roddy Gardner, D.O. Case No. 3364 License No. 0975

The Board agreed to allow Dr. Gardner an additional 90 days in which to obtain the rest of the required CME hours for renewal.

XI. REVIEW, DISCUSSION, AND ACTION ON NOTICES OF MALPRACTICE SETTLEMENTS, JUDGMENTS, AND DECISIONS, PURSUANT TO ARS § 32-1855.02, 32-3203, AND 20-1742; AND NOTICES OF CRIMINAL CHARGES, PURSUANT TO ARS § 32-3208.

A. Malpractice notices: disclosures made on renewals

The Board reviewed a list and brief description of malpractice payments that had not been opened as complaints, because the cases did not meet the Board's guidelines for automatically opening (see attached). The Board directed the cases involving Philip Bain, D.O., George Engisch, D.O., Herbert Hitchon, D.O., Lee Laris, D.O., Robert Lock, D.O., and Gerald Perkins, D.O. be opened as complaints and further investigated.

B. Criminal charges: disclosures made on renewals

The Board reviewed the disclosures and explanations of criminal charges and convictions made on renewals and determined that none needed to be opened as complaints or investigated further.

XII. REVIEW, DISCUSSION, AND ACTION ON PROPOSED LEGISLATION FOR UPCOMING SESSION, PURSUANT TO ARS § 32-1803(B)(13).

Consideration legislation for upcoming session (2005)

1. Confidential physicians health program
2. Appropriate supervision of licensed and unlicensed health care professions
3. Updating operational and technical language

The Board discussed with the Executive Director concerns with the current statutes that might be addressed during the upcoming legislative session.

XIII. REVIEW, DISCUSSION, AND ACTION ON RULEMAKING, PURSUANT TO ARS § 32-1803(C)(1) AND (A)(10), AND SUBSTANTIVE POLICY STATEMENTS, PURSUANT TO ARS § 41-1091

A. Packet FY02-01: Medical Assistants and miscellaneous changes

The Executive Director informed that Board that these rules had been approved, and will become effective on August 2, 2004.

B. Packet FY04-01: Licensing and Timeframes

The Board discussed the proposed rules with the Executive Director and agreed to have work proceed on the packet.

C. Committee on Guidelines for History and Physicals

After discussion of the statutes and case law on making and keeping adequate medical records, the Board agreed that it was not an appropriate time to form a committee on this issue.

D. Radiation Regulatory Agency rules on laser technicians

Ken Pettit, D.O., was present and discussed with the Board the history and his perspective on the rules proposed by the Radiation Regulatory Agency for the regulation of unlicensed assistants operating lasers. The Radiation Regulatory Agency has amended their proposal, to allow that operators using lasers for hair removal be indirectly supervised by a licensed practitioner, according to standing protocols. Other cosmetic procedures require direct, on-site supervision, and that the licensed practitioner must evaluate the patient prior to treatments being done. The Board did not vote on a position regarding these proposed rules.

XIV. REVIEW, CONSIDERATION, AND ACTION ON EXECUTIVE DIRECTOR'S REPORT.

A. Performance Measures Report

The Executive Director answered the Board's questions about the performance measures.

B. Financial Report

C. List of Meetings and Articles

The Board received the above reports without comment or question.

XV. ADJOURNMENT

The meeting was adjourned at 3:55 p.m.

Draft date: June 21, 2004

Approved: July 31, 2004